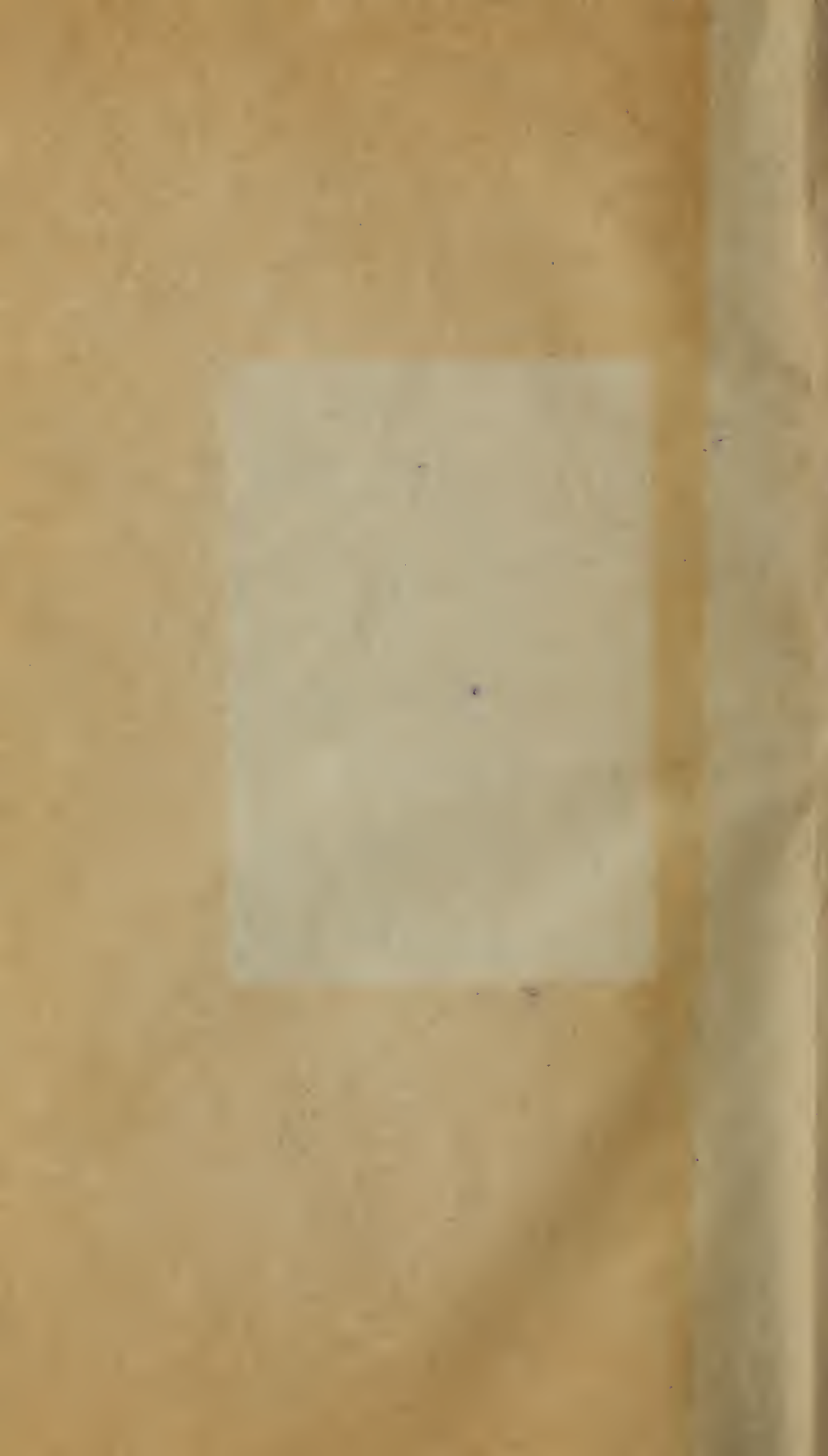


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AN
AUTHENTIC REPORT
OF A
TRIAL

BEFORE THE
SUPREME JUDICIAL COURT OF MAINE,

FOR THE

COUNTY OF WASHINGTON, JUNE TERM, 1824.

CHARLES LOWELL vs. JOHN FAXON & MICAJAH HAWKS,

||
SURGEONS AND PHYSICIANS, IN AN ACTION OF

TRESPASS ON THE CASE,

For Ignorance and Negligence in their professional treatment of the Plff's dis-
located hip, with observations on the prejudices and conduct of the Inhab-
itants of Eastport, in regard to this cause; the character and testimony
of the several Witnesses, and the novel, and extraordinary posi-
tions assumed by the Court.

"Gross Negligence, therefore, is in the law said to be almost equal to malicious design."

PORTLAND :
PRINTED FOR THE AUTHOR,
1825.

Published by the Plff

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District of Maine, ss.



BE IT REMEMBERED, that on this seventh day of January, in the year of our Lord one thousand eight hundred and twenty-five, and the forty-ninth year of the Independence of the United States of America,

MR. CHARLES LOWELL,

of the District of Maine, has deposited in this Office, the title of a Book, the right whereof he claims as Proprietor, in the words following, viz:

“An authentic Report of a trial before the S. J. Court of Maine, for the County of Washington, June Term, 1824. CHARLES LOWELL vs. JOHN FAXON & MICAJAH HAWKS, Surgeons and Physicians, in an action of trespass on the case, for ignorance and negligence in their professional treatment of the Plaintiff’s dislocated hip; with observations on the prejudices and conduct of the inhabitants of Eastport in regard to this cause; the character and testimony of the several witnesses and the novel and extraordinary positions assumed by the Court. “Gross negligence therefore, is, in the law, said to be almost equal to malicious design.”

In conformity to the Act of the Congress of the United States, entitled, “An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned;” and also, to an act, entitled, “An Act supplementary to an act, entitled, an act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.”

J. MUSSEY, *Clerk of the District Court of Maine.*

A true copy as of Record,

Attest, J. MUSSEY, *Clerk D. C. Maine.*

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TO THE PUBLIC.

HAVING passed through an extraordinary scene of suffering injustice and oppression, and having been encouraged by several literary gentlemen, whose opinions I respect, and believing it would promote the cause of justice, by exposing corruptions and fraud, and by guarding the public against two very alarming evils, which are daily ruining thousands throughout our happy land, I have been induced to present you with the following report of observations, respecting an important cause, which has for the last three years caused no ordinary degree of excitement in this county and other parts of Maine, and terminated in a manner that surprised almost every disinterested person who was acquainted with the transaction, and (as I think) reflects much on the official conduct of Judge Weston, and the candor and intelligence of the Jurors of this county. As I consider myself unusually and wickedly oppressed in this novel transaction, I most urgently and respectfully request a generous public, to give this pamphlet a thorough and candid reading, and then say, whether I have not sufficient reason to complain of these Doctors, and the Court, and Jury. I regret that I have been unable to obtain the arguments of the counsel, and for the charge which will be found in this work, marked D., I am indebted to the politeness of a young gentleman, who took it down, and is ready, as are also many others, to testify, that the greater part of it, is verbatim, and that, no part of it contains an idea that was not advanced by the Court. In order that the public may have a right idea of this cause, and its aggravated circumstances, I shall now proceed to give a brief history of the whole affair, omitting such parts as appear unimportant, or are contained in the accompanying depositions.

On the 7th of Sept. 1821, I was thrown by a young and restive horse, which fell immediately upon me in the manner stated in the deposition of J. G. Reynolds. Doctor John Faxon, of Lubec, (where I resided at that time) was immediately called in, examined and pronounced the hip dislocated; said, he could set it, and

accordingly operated, and declared the dislocation reduced. Faxon had been my family physician for several years, and at that time, was the only one in town. It is understood, that he is not a thorough bred physician, and it is also well known, that he does, notwithstanding, make very great pretensions to a thorough knowledge in every department of physic and surgery, (Judge Weston's assertion to the contrary notwithstanding.) As this was an important case, my friends advised me to send to Eastport, three miles distant, for Dr. Hawks, who had also been my family physician in all cases of importance for three years preceding—he arrived in about two or three hours, examined and again put me to the torture, and subsequently conducted in the manner stated in the deposition of Joshua A. Lowell. Doctor Hawks settled in Eastport (I think in 1818) and in August of that year, attended me with a fever in company with Dr. Faxon, and for 7 visits, at that time, I paid him 21 dollars besides medicine and passage money. In 1819, he was again employed in my family, and in both instances, received his pay as soon as the services were rendered, While I was confined with my lame hip, it was notorious, that Dr. Hawks did say, that it was a pity, there was not some living spectacle of Faxon's ignorance and quackery; and that too at the time, when I was in excruciating pains, it being on the 4th or 5th day after the operation; when we sent by Brooks for him to come over and see me, as stated by J. A. Lowell—Brooks also testified, that he did the errand at the time; when Hawks came to Lubec on the 19th November, after neglecting me 15 days at one time, 10 at another, 3 weeks at a third, and 4 weeks at the fourth time, it was not to give the pleasing intelligence, that I should soon be well, and return to my business with all my former powers; nor was it with an intention of seeing me at all. No, it was merely for the purpose of introducing his friend Whipple, who had come from Boston with the intention of settling at Lubec: he did, however, inform me, that I had gotten to be a cripple for life, all through Faxon's ignorance and quackery, (as he said) he observed that he reduced the dislocation at the time of recent injury, so that Faxon had permitted me again to luxate the hip, notwithstanding my kness were tied together with a bandage. Hawks and Whipple arrived at Lubec about noon, and spent the residue of the day with other people, and about sunset went to the wharf; and Hawks was on the eve of departure, without seeing me at all, when I hobbled out with my crutches, and persuaded him to come in, which he did, and told me as before stated; these are solemn facts, which speak volumes. Dr. Whipple did not think the

chance for me to be helped so small as Dr. Hawks did ; when Dr. Hawks left my house at this time, he told me that I should be safe in the hands of Dr. Whipple, and if I should conclude to have another trial he would come over and assist, at any time I should send. I spent one week in suspense, not knowing whether to submit to another operation at Lubec, or to go to Boston—during this week of suspense, refreshment and repose were almost entire strangers to me ; but after I had determined in my own mind which would be the better, I went on board the packet, bound to Boston, and although it was but one week after Hawks' last call, he was so inhuman, as to send his bill on board the packet at 10 o'clock at night, and demanded and received payment in cash, for such treatment as above described. I arrived in Boston early in December, and after consulting with Dr. Warren, who told me there was no probability of helping me, that the time for my relief was past, that if I had been there in three or four weeks after the injury, he could have made every thing right, that it was nonsense for Hawks to say he ever reduced the dislocation, and that I displaced the bone again while lying in bed. I persuaded him to operate, as he said it would make me no worse, and was possible, though very improbable, that they might succeed. Previous to the operation, he called in Doctors Mann, Spooner, Welch, and Townsend, and those five, were unanimously of opinion that my injury was a simple *luxation*, but that it had been of so long standing, being then exactly three months, that there would be no prospect of success in the operation, and it remained with me to decide, that if I insisted on the operation, they would make the attempt. I told them I was prepared in body and mind to submit to the pains of an operation, that I was a young man, and had a family depending on my industry for support, and that on their account I considered it my duty to submit to a trial by them, so long as there was a possibility of success. The operation was accordingly performed with the *pullies*, bandages, and chords, in the presence of more than one hundred persons, including surgeons, students and spectators. It occupied nearly two hours, and although it entirely failed of success, I was, and am still well satisfied with Doctor Warren's management, and must say, that I believe his preparatory as well as operative measures, were very judicious and such as could not well be exceeded in point of skill and prudence. Notwithstanding I was perfectly satisfied with this operation, I was persuaded by my friends in Boston, to let Dr. Ingalls examine me, and afterwards operate in one week from the time Dr. Warren operated, assisted by Dr. Yates and about a dozen

students. It was, however, altogether without success. In about two weeks from that time, the bone-setter, (Dr. Hewes) made a similar attempt, attended with a like result. After I had conversed with these Doctors in Boston, I was satisfied, that I had been imposed on, and that my ruin had been effected by ignorance, stupidity and the most unpardonable neglect ; therefore, as soon as I returned to Lubec, I commenced an action for malpractice ; previous to which, I sent my brother to Faxon with money to settle his bill ; but he having heard the day before, that I was about to commence a suit against them, told my brother he had no charge against me in the case, he having acted as assistant to Dr. Hawks. This was policy. The suit was accordingly commenced, and came to trial March term, 1823—of the C. C. Pleas, when I obtained a verdict of 1962 dollars damages ; from which the defendants appealed to the S. J. Court, which set in July following. At the C. C. Pleas, Judge Perham presided, and was decidedly of opinion, that I ought to be remunerated ; and Chief Justice Mellen, who tried the cause at the upper Court, was also of the same opinion : at this Court, the cause appeared clearer than before, and there was nothing to prevent a verdict in my favor, but the Jurors from Eastport and two others, who were under the immediate corrupt influence of that place—and here the subject leads me to remark, that there has been for several years a great rivalry existing between the towns of Lubec and Eastport, and that the local prejudices of the inhabitants of the latter place, have, on account of my living at Lubec, had a very powerful effect on this important trial : and with all due respect for the characters and feelings of others, I now declare, and be it said to their eternal shame, that a very great proportion of the inhabitants of Eastport, (I do not mean to say all) let their pretensions to christianity and respectability be what they may, have combined together to defeat this most righteous of all righteous causes. In support of this assertion, I would mention the following circumstances, viz. At the first trial, there was one man on the Jury from Eastport, who stood out 6 or 8 hours after the other 11 had agreed, which they did in 20 minutes, that the defendants were guilty of what I charged them with, and then estimated the damage or loss of my hip, at the paltry sum of *one hundred dollars* !! When Judge Mellen tried the cause, there were on the Jury from Eastport three merchants, one of them the Deacon of a Baptist Church, and otherwise a respectable man, who when he was interrogated by the Court as to prejudice or bias in respect to the cause then about to be tried, answered, that he had none ; had heard nothing of

the case, and formed no opinion on the subject—another, who had represented the town in the State Legislature, answered, that he had not *heard* of the case; at which the Judge appeared quite surprised, and said, he could not say he had not heard of the case, though he lived in Portland. The fact no doubt was, that these fellows had heard the case spoken of more than an hundred times, for it had caused great excitement, and been a subject of general conversation through the county; and in spite of all that could be said by my counsel, and in opposition to general usage, and every principle of modesty and justice, they would stay on the Jury, and for what purpose, I leave for the public to judge. As soon as these three men were drawn Jurors for the S. J. Court of 1823, one of the selectmen of Eastport, naming who had been drawn, told a certain gentleman, that he might consider the fate of Lowell's case as determined, that he would not give 4 l-2d for his chance of success. Is it unreasonable to suppose that this *selected* man, had learned the opinion of these men, previous to the drawing, had presided at the jury box, and was instrumental in their being drawn? In consequence of the Jury not agreeing the cause stood continued till the June term, 1824.—After the cause was taken from the Jury, my counsel addressed the Court and observed, that the result was no more than he expected: pointed to those three Jurors and said, “Those fellows remained on the Jury on purpose to defeat the cause of justice:” a severe but deserved rebuke. The cause was again brought to trial, Judge Weston presiding; who instructed the jury in such a *novel* and extraordinary manner, that they did not agree, after which, it was proposed by the Court, and acceded to, by the parties, that the cause should be entered neither party. I should never have consented to such a disposition of the action, had it not been, that the excitement and prejudice were so great, that there would be no probability of getting an impartial trial. The substance of my testimony as to facts in Lubec, is contained in the three following depositions, viz. :—

A.

I, Jonathan G. Reynolds, of Lubec, in the county of Washington, do depose, testify and declare—

Question by Charles Lowell, plaintiff.—Were you the owner of the horse by which I got hurt, in 1821?

Answer. I was.

Ques. by same.—Were you present when I received the injury?

Ans.—I was.

Ques. by same.—Did I fall on my back, or side?

Ans.—It appeared to me, you fell on your back.

Ques. by same.—As I fell, did the horse fall directly across my thighs?

Ans.—It appeared to me, at the time, that the horse fell obliquely across your thighs and other parts of the body, and it appeared to me, that the horse fell partly betwixt the legs, so that his weight was more on one hip than on the other.

(Signed,)

J. G. REYNOLDS.

Sworn to before DANIEL PEASE, J. P.

B.

I, Jacob Winslow, of lawful age, do testify, declare, and say—

Ques. by Lowell, plaintiff.—Were you employed by my brother to go after Dr. Hawks and to carry him back to Eastport, at the time I had my hip injured in 1821?

Ans.—Yes.

Ques. by same.—When you got to Eastport, and told Dr. Hawks I wished for him to come and see me, did he express any inconvenience or hesitation about visiting me?

Ans.—He did not.

Ques. by same.—When you were on your return to Eastport, did Dr. Hawks say any thing to you about my injury, or about Dr. Faxon as a physician in my case?

Ans.—He did.

Ques. by same.—Did Dr. Hawks say, that Dr. Faxon was not fit to doctor a sheep or hog, much less a human being, or use words to that effect?

Ans.—He either said, that Dr. Faxon was not fit to doctor a hog or sheep, or that he would as soon trust a hog or sheep to doctor him.

Ques. by same.—Did Dr. Hawks tell you, that he had set my hip, and that it would probably be well in a short time?

Ans.—I asked him if he thought the bone was broke, he said no, the bone was out of joint, and he had set it, and it would probably be well soon.

Ques. by defendant's attorney.—Have you ever had any difficulty or misunderstanding with Dr. Faxon?

Ans.—No.

(Signed,)

JACOB WINSLOW.

Sworn to before AARON HAYDEN, J. Peace.

C.

I, Joshua A. Lowell, of Farmington, in the county of Kennebec, student at law, do testify, depose and say, that I was employed as clerk in the store of Charles Lowell of Lubec, at the time he had his hip dislocated by a fall from a horse, which was on the 7th of September *Anno Domini* 1821. I was immediately called, (I think) by a Mr. Stearns. On my entering the room, I found Dr. Faxon endeavoring to set it. Mr. Stearns, Mr. Coffin, and some others whose names I do not recollect, were in the room at the time. The only means, I recollect of being used to set the dislocated limb, was a ball, made of a large sheet, as a *fulcrum*, the dislocated limb serving as a *lever*; in a few minutes, he (Faxon) said that he had set it, and asked us to feel, and see if it were not set—Mr. Coffin told me, he had known one or two instances of the kind, and knew that the hip was not set. He advised me to send to Eastport for Dr. Hawks. I talked with Mr. Lowell, and we concluded to send for him, (Hawks) and named it to Faxon, who said he was willing we should. The operation performed by Dr. Faxon, was immediately after the fall, I should think, within 15 minutes. Dr. Hawks arrived in about 3 hours after, examined the dislocated limb, asked Dr. Faxon some questions, they then went together into another room, were absent a few minutes and returned; Hawks said “Mr. Lowell, we must hurt you some more.” Lowell asked, “Doctor what is my situation?” Dr. Hawks answered, “your hip is dislocated, and I think the socket a little fractured, but we will set it.” Faxon then said, “yes, I am convinced that all is not right”—Dr. Faxon then asked, “what part shall I take in the operation?” Hawks answered, “what part do you choose?” Faxon replied, “a second hand birth.” They then undertook jointly to reduce the dislocation, Hawks directing the manner of the operation, which as near as I can recollect, was as follows—Lowell was placed crosswise on the bed, a sheet put round the well thigh with several men to draw upon it—Some others at the arms, and two or three with Faxon extending the lame limb, by means of a towel taken round he knee. During the operation, Hawks would occasionally assist in extending the lame limb, but most of the time, appeared to be trying to discern the head of the thigh bone. I did not know of their using any other means to remove the bone from its lodgement, than the extension of the limb. At the time they commenced, the lame limb being off in an awkward position from the body, forming an angle with the other, of about 40°. While extending the lame limb, they carried it in towards the other

which made a kind of grating. They (Hawks and Faxon) then said, it was set, and that the grating was made by the bone going into the socket: they then put a handkerchief round the Patient's knees, and Faxon said "Lowell you must lie here three days"—three days!! said Hawks, "you must lie three times three days—you must lie on your back, fourteen days."

Lowell, (the patient) then asked Hawks, if it would not be necessary for him to come over the next day, to see him, and telling him at the same time, he did not value the cost; to which, Hawks replied, "No, for I will give Dr. Faxon, a particular charge how to proceed"—during this last conversation, Faxon was in the other room. He came in soon after, and Dr. Hawks said to Faxon, "you must bleed Mr. Lowell to-morrow, for he has not bled very well now," and added, "you must take care that an inflammation does not set in," with some further directions which I do not recollect. They (Hawks and Faxon) then said to Lowell, "you are now in a good way, you will do well; and will not be detained from your business, more than a few weeks"—Hawks said, "you must not however be in too great a hurry to get out, for your case is an important one"—Dr. Faxon came in next morning without being sent for, and continued to attend him, a number of weeks, calling pretty often at first. He did not to my knowledge examine the limb after the operation, though he often prescribed liniments for bathing it. Lowell was in great pain and entirely restless for a number of days, particularly on the 4th & 5th days after the operation. At this time Mr. Wm. M. Brooks was over from Eastport, and we sent by him for Dr. Hawks to come immediately. He did not come at that time.—On the 15th day after the operation, being about 10 days after we sent by Mr. Brooks, Hawks came over without being sent for to my knowledge. He came a few minutes after Lowell had been from his bed for the first time to have it made—at this time, I was not at the house. A short time after, Dr. Hawks sent over a phial of liniment—Lowell continued to lie in bed a number of days, making in all 18 days—about 8 or 10 days after that, Hawks came over again without being sent for to my knowledge—I was present, and very particular in noticing all he said respecting the lameness. Lowell stood up, and said, "Dr. explain to me the cause of the hollow on the outward side of the injured hip"—to which Hawks replied, "it is a natural consequence: when your hip strengthens, so as to bear an equal proportion of the weight of the body, that hollow will fill up"—he said further, "you are doing well, Mr. Lowell, and will eventually be well as ever."

You must not be in too great a hurry to get out, for if you make one misstep, you may yet be a cripple for life. It would be better that your house should burn down round your ears, than that you should make one slip." He said, "write to me Mr. Lowell and state particularly how you feel, and I will come over, or send such medicine as you may need." While he was there he took hold of the limb, and surveying it several times, and said, "it is all right." He tarried only a few minutes and always appeared in a great hurry. On or about the 23d day of October, he called again, being two or three weeks from the time he was over before, appeared in extreme hurry, and would not stop to sit down, said to the patient, "I wish to ask you a few questions. Lowell replied, "I wish to ask you one first," and said, "Doctor, what is the cause of the lame limb being so much longer than the other?" At this, Dr. Hawks appeared surprised, and after being questioned very closely said, "it looks as though the bone was not in its place, but I will be over to-morrow, and give it a thorough examination." He did not come over at that time. About 8 or 10 days afterwards, I was at Eastport and told Doctor Hawks, Mr. Lowell was anxious to see him, and asked him why he had not been over? he answered, "I have been so much engaged, that I could not leave, but I will be over this afternoon and examine him unless the witches prevent"—I asked him, what do you think of his situation, and the lame limb being longer than the other? To which, he answered with an oath, "I am afraid it is not set." He did not come over at that time. The next time he came over with a Dr. Whipple. I was not in the house at the time. This was the last time I ever knew him to call, and was about the 19th of Nov. and was nearly 4 weeks from the time he promised Mr. Lowell at Lubec, and 16 days from the time he promised me at Eastport, to go over the same day—Mr. Lowell's family were out of town during his whole confinement. I was very particular in my attention on him, and was with him a great part of the time both day and night: he was very particular to act according to the Doctor's directions, so far as I was knowing—I am confident the position and length of the limb, are the same now, they were when he first left his bed.

Quest. by plaintiff.—Before the sheet and towel used for extension, were applied, were the parts protected by cotton wool, compresses of linen, or any soft substance, or was there any thing said by the surgeons about them, or about a mattress or any other kind of bed?

Ans.—I neither saw, nor heard any thing of the kind.

By same.—Did the Doctors appear to act jointly and deliberately, or otherwise? Please to state, and how long you think they were in the examination of the case.

Ans.—They did appear to act jointly, but hastily—I think they examined the case, not more than one or two minutes.

By same.—Do you recollect any thing respecting the *flexure* or *hamstring* muscles immediately contracting, and of my complaining of considerable pain from them, and that the contraction and pain continued a great part of the 18 days, which I was confined to my bed, in such a manner as to keep the limbs continually bent, as it now is?

Ans.—I do recollect, that such were the facts.

By same.—Did I not at the time express great surprise at the Doctors' treatment?

Ans.—You did.

By same.—Was I not very inquisitive and particular with the Doctors at their several visits, and especially with Dr. Hawks respecting the reasons for the unnatural appearances, which presented themselves in my case, and did they not always assure me, that all was right, and that with care, I should shortly be well as ever?

Ans.—You were very particular in your enquiries, and they did assure you all was right.

(Signed,)

JOSHUA A. LOWELL.

Sworn to before NATHAN CUTTER, J. Peace.

The substance of the professional testimony adduced at the trial, is as follows, viz.: Doctors Warren, Mann, Welch and Townsend, Surgeons and Physicians of the "Massachusetts General Hospital," who examined in company with Dr. Spooner and others, three months after receiving the injury, and operated to reduce the dislocation, testified, that the hip was dislocated *downward and backward* into the *ischiatric notch*, that it was a simple dislocation, that it might have been reduced, when the injury was recent; and that men of high standing in the profession, would not be likely to differ as to the nature of the injury; that if no other means were used to reduce such a dislocation, than what could be applied without Pullies, they should suppose that proper means had not been used, and that the patient had not had justice done him; that a Surgeon of ordinary skill and prudence, could not fail in reducing it, or of knowing that it was not reduced; and that if it had been once reduced, the Patient could not dislocate the bone again, while lying in bed; that a skillful and prudent Surgeon would compare the length of the limb with that of the

other, and examine the injury occasionally. Dr. Brown, of Waldoborough, an old experienced Surgeon and Physician, and Dr. Estabrook, examined the injury and testified to the same amount, but in stronger and more explicit terms. Dr. Richardson, testified that from having seen me frequently walking in the street, he had perceived, I was lame, and that my lameness was a dislocation of the hip. The only contrary evidence of those who had examined the lameness, was that of Doctors Smith and Frye, who examined it 9 months after the injury, and testified that the thigh bone was not dislocated, that the injury was an affection of the muscles, and the former testified, also, that if the bone were dislocated into the *ischiatric notch*, the limb would, or might be longer than the other, as this notch in the living subject, was so filled with strong chords and ligaments, that the bone could indent but very little into it. Of those who had not examined me, Doctors Chandler & Weatherby, who testified that a dislocation into the *ischiatric notch*, would, (as Cooper says) make the limb shorter than the other, instead of longer; and Dr. Sargent, who testified merely as to the good character of Dr. Hawks as a Surgeon. There was other professional testimony taken on both sides, but the above is substantially what was used at the trial, excepting the deposition of Dr. Whipple, which the court admitted to be read contrary to law, and which no doubt had all the effect which was intended by it, although in the charge, the Jury were instructed to consider it as not having come before them—although I do not conceive the necessity of the Court or Jury settling the question as to the particular kind, or *technical* name of the dislocation, it being quite obvious, that the head of the *former* was not in its proper socket. I will now examine the conflicting testimony on this point, by placing it in two separate columns.

<i>Pl'ffs. Positive Testimony.</i>	<i>Time of Exam'n. after the injury.</i>	<i>Dislo- cated.</i>	<i>Def's pos. Testimony</i>	<i>Time of Exam'n.</i>	<i>Not Disloc'd.</i>	
Mann.	} 3 months	5	Smith.	9 mo.	1	
Warren.			Frye.	" "	1	
Spooner.						—
Welch.						2
Townsend.)			Balance of positive			
Brown.	5	"	1	testimony of a		
Estabrook.	12	"	1	dislocation.		
W'pl's 1st dep.	2	1-2	"		8	
Defendants' declaration at the time of operation.					—	
			2		10	

Circumstantial Testimony.

The operat. of Ingalls and Hewes in Boston.	} 3 mo. 2	
Patient's appearance		999
		1001

Circumstantial Testimony.

Cooper's Book.	1
Chandler.	1
Weatherbee.	1
	3
Balance of Circ. evidence	998
	1001

It will appear from this statement, that there are ten positive evidences in support of a dislocation ; and only two positive evidences, against it ; and of the circumstantial evidence, a balance of 998, that there is a dislocation. From this plain statement of facts, I should be willing to rest the cause with an intelligent and unbiassed community, to determine if the preponderance of the testimony in my favor, is not sufficient to satisfy them, that the hip is dislocated—but, we will take another view of the subject, and see what weight ought to be given to Cooper's Book, and the testimony of the several witnesses ; and first, as to Cooper, it must appear obvious to any person of common powers of mind, who reads and reflects on the subject of anatomy, or the human system ; that, he is in an egregious error, and it may be accounted for in this way, to wit, that he, (as he says) measured from the centre of the *acetabulum* or socket, in the skeleton, to the top of the *ischiatric notch*, and found the latter to be from an half inch, to an inch above the former, so that, if the head of the *femur* were lodged in this notch, the limb would be that much shorter than the other ; this he set down in his own mind, without making any allowance, for the difference between the clean bone of the skeleton, and the living subject, or considering, that the top of this notch, is too small to admit the head of the bone into it. Dr. Smith, their own witness, and the only one whose testimony is of importance, whom they bring up to support Cooper's position, says, that if the femur were lodged in this notch, the limb would or might be longer than the other ; that in the living subject, this notch is so filled with strong chords and ligaments, that the head of the bone could indent but very little into it. It is somewhat singular, that such a man as Sir Ashley Cooper, should make such a mistake in his professional writing, and it is certainly very extraordinary, that Judge Weston, should in his official capacity, set down the theoretical writings of an English Author, who writes on general principles, to which there are always exceptions, as better evidence than the positive testimony of such a number of

respectable witnesses, who had actually examined the particular case in question: but enough for the present. I shall take hold of that, by and by.—As to Dr. Smith it may be observed, that it is matter of some notoriety, that he is a very hasty man, and always inclined to oppose any idea advanced by the Boston faculty; and when he was told what took place in Boston, he replied, “a pack of old grannies.”—“I suppose Warren said so, and all the rest fell in with his opinion;” and also, that while he remained at Eastport, he tarried with Hawks and his counsel, who no doubt used all the powers of their feeble minds, to enlist his prejudices in their favour, and that Hawks gave a deposition for him, in another cause at the same time Smith gave one for him in this cause; and that he never reduced but one dislocation of the hip, in his life; that he told me, to make an issue on the outside of the hip, and keep it in operation for several months, and I should be a well man; that I complied strictly with his directions, but to no effect; also, when on his way from Eastport to Brunswick, he operated on a child belonging to a Mr. Thomas, of Camden, and in about one hour after he took the child from its play, it was a corpse. The parents of the child had previously carried it to Dr. Brown, and wished him to perform the operation, but he declined, saying, “it cannot be done without endangering the child’s life. If you let him alone, he may live comfortably for several years.” Will it be said, that in the case of this child, Dr. Smith acted in a skilful and prudent manner? His proneness to oppose the Boston Doctors, his gratitude to his benevolent benefactor who had entertained him and given him a deposition, his partialities for the profession, his inexperience in dislocations of the hip, his ignorance of the result of his operation on the child in Camden, and the effect of an issue on my hip, should all be taken into consideration in weighing his testimony in regard to this cause; and also, the fact of his saying after his very short examination of the lameness at Eastport; “I will stake my life, that your hip is not out.”—As to Wetherbee and Chandler, it was understood that they were each of them expecting a similar prosecution, if I succeeded in this; and if it were not so, neither of them ever gave the lameness the slightest examination, and if they had, would not probably have been capable of judging, especially the latter, for he appears to me, to have scarcely sense enough to keep out of fire and water; he came on to the stand, in such a frightened and trembling manner, that it seemed as if his feeble limbs would be unable to prevent his falling to the floor; and there testified, that he was acquainted with *all the*

medical men in the United States ! that, Dr. Smith was much superior to Dr. Warren, and all others of the profession in the Union ! On being cross examined, as to the manner in which he had become acquainted with the medical men of the United States, where he received his education, and where he had travelled, answered, that he received his education in Boston, and had travelled south—when asked how far south? answered, as far as Dorchester !! O, what a traveller !!! Dr. Chandler would do well to publish his extraordinary travels, in order that the public may be benefitted by his wonderful discoveries. Dr. Frye, I understood had been a student of Dr. Smith ; he examined, and testified at the same time, and of course would not like to give an opinion, different from that of his Master—so much may suffice, for the Defendants professional testimony. I will now notice the testimony in support of the action.

As to the testimony of Doctors Mann, Warren, Welch, Spooner and Townsend, I need only say, that they are among the most respectable and experienced Surgeons in this country, and with the exception of Dr. Warren, have all been in practice, about fifty years—he, has probably had the most thorough medical education, of any man in New England, perhaps, in the United States ; and for the last twenty years, the most extensive practice ; has frequently reduced dislocations of the hip, and no doubt, has had more actual experience in reducing luxations, than Smith and every other Surgeon who has testified in this cause ; with the exception of Dr. Brown—his well known deliberation and modesty, are a sufficient guaranty, that he would not form his opinion hastily, or testify positively or inconsiderately, on a subject of this nature. And here it may be proper to observe, that without any previous history of what the lameness was considered at Lubeck, or the treatment I had received there, he gave a careful examination of my injury, on two several days, before giving me his opinion ; and also, that I could not get him to give this deposition, until I sent an officer, and tendered him the legal fee. Dr. Mann was a Surgeon in the Revolutionary war, the late war, and is now a Surgeon in the United States service.—Of the other Gentlemen, it is unnecessary to speak particularly, as they are well known to be skillful and experienced Surgeons, and such as would know whether a hip were dislocated, without being told by Dr. Warren, or the celebrated Dr. Smith himself ; who can tell that a man's hip is not dislocated, without any examination, and while he is twenty rods off—Dr. Brown, is one of the most respectable and experienced Surgeons in Maine, and was

also in the service of his country during the Revolutionary war, and has frequently reduced dislocations of the hip.

Dr. Estabrook is young, but a very respectable and promising young man, and ranks high in his profession, particularly in the Surgical department—he examined me alone, and without knowing, that he should ever be called to testify on the subject. I wish the Reader to bear in mind, that the partialities of all these witnesses are in favor of the Defendants; in consequence of which, the testimony is less severe upon them, than it would otherwise be. The manner in which I received the injury, is shewn by J. G. Reynold's deposition, marked A. The circumstances of the two operations at Lubec, and the subsequent treatment of Hawks and Faxon, by that of J. A. Lowell, marked C. and the opinion which Hawks had of Faxon, by that of J. Winslow, marked B. The testimony of Messrs. Sumner and Stearns, I have omitted on account of its being merely corroborative of that part of J. A. Lowell's, which relates to what took place on the evening of the operation. I have also omitted on the part of the Defendants, the depositions of Messrs. Hobbs and Webster, the amount of which was, that two Ladies were confined at Eastport in the Autumn of 1821; and that Dr. Hawks was their family Physician. Messrs. Green and Lincoln testified, on the part of the Defendants, that they were present at Smith's examination, and considered it sufficiently long. Mr. Phelps, testified that he heard me say I had been advised by my Attorney, to include Faxon in the suit, as it would prevent his being a witness. The two former, are Eastport folks, and the latter a man of the *hot-crop* persuasion; and I understand, has lately formed an alliance with Dr. Faxon—comment is unnecessary. J. A. Lowell, has given two depositions in this cause, and testified twice on the stand; and on being examined in Court, testified, that he had heard Hawks make observations about Faxon, similar to those mentioned in Winslow's deposition, and also that at the operation he was present all the time, and saw no measurement or comparison made of the limbs, and that during my confinement with my lameness, he had heard me frequently complain that I was deserted by both Doctors. Josiah Coffin's deposition, named in the charge, I have thought it unnecessary to notice, as they are diametrically the reverse of each other.

I have now gone through with the Evidence and history of this lamentable affair, which has caused me some of the most excruciating pains, that human nature is capable of suffering; one affair, which has caused me many a painful day and foreboing

night, swept from me, a comfortable living, which I had acquired by my own industry and perseverance, and doomed me to drag out a miserable existence, through the residue of my mortal life; for every step I take, I am reminded of my now irreparable misfortune. I am aware of the necessity of kissing the rod, and him who hath appointed it; and were it purely an act of God, I could submit to it without a murmur; but when I reflect on the fact, that I, a young man in the bloom and vigor of life, with a family, am suffering so severe a calamity, all through the ignorance, fraud and unprecedented negligence of those men, in whose hands we trust our lives; it admits of no consolations, except the consciousness, that they will be brought to the test of public opinion, and there found guilty, and from thence, to a higher tribunal, than that of their country. Yea, a tribunal where the partialities of the Court, nor the prejudices of the Jurors, will be able to defeat the just cause of the unfortunate. Upon a careful perusal of all this incontrovertible evidence, I am, and I trust the public will be, irresistably drawn to the following conclusion, viz. : That at the operation, Hawks and Faxon were ignorant, hasty and careless. Ignorant, in not reducing the dislocation, or knowing that it was not reduced. Hasty, in not taking more time for the examination. Careless, in not comparing the length of the injured limb, with the other, or ignorant, in not knowing it was necessary to be done; and that if Faxon had been a skilful and prudent Surgeon, he would have given the lameness a very careful examination, when I complained to him of great and increasing pain for days and weeks after the operation, especially so, as he had found the limb drawn up, or crooked by the contraction of the muscles. If he had done this, he would no doubt have discovered, that the dislocation was not reduced. He was therefore guilty of gross negligence, in not examining the injury after the operation, and in neglecting me altogether after the first 30 days. That Hawks, if he did not mean to attend me, was grossly to blame, in leaving me to perish in the hands of a man, that he did not consider fit to doctor a sheep or a hog, as appears from his declarations at different times, and especially from those to Winslow. In his defence, he contends that he had nothing more to do with me after the operation, that he left me altogether in Faxon's care. Would a skilful, prudent and humane Surgeon, have left a patient situated as I was, to a man like Faxon? I answer, No. If he did not consider me his patient, it was certainly his duty to have said to me, "Lowel, it is not prudent for you to trust yourself with Faxon, but I cannot attend you, and

you ought to look out for another Doctor," in which case, he would have been perfectly exonerated. That, I sent for him on the 5th day after the operation, and he paid no attention to the message, but came 10 days after, without being sent for. If he did not consider me his patient, why did he come and direct me to lie 3 days longer? That, I then told him, I had been in extreme pain and feared the bone was not in its place. Why did he not examine me carefully, and see that the dislocation was not reduced? Why did he assure me all was right, when every moment was to me pregnant with events, momentous as life? And again, why did he stay away 10 days longer, and then come without being sent for? And when, being interrogated by me as to the cause of the hollow on the out side of my hip, where there is a natural prominence produced by the *trochanter major*, when the limb is in its natural place, why in the name of common sense, did he not discover that the hip was still out of joint? Again, that after an expiration of three weeks, which brought it to October 23d, he came again without being sent for, and by my putting pointed questions, and demanding categorical answers, as to the cause of the injured limb being so much longer than the other, was forced to acknowledge that the limb looked as though it was not set, said he was in a hurry, but would come the next day and give my lameness a thorough examination; that I waited ten days without seeing him, and then sent the witness (J. A. Lowell) after him; that Hawks then renewed the promise, saying, he would be over that day, unless the witches prevented, and that he was afraid the hip was not set; that notwithstanding these repeated and positive engagements, and his acknowledgement of his fears as to my extremely critical situation, he neglected me altogether from the 23d of October, till the 19th day of November; a period of 27 days!! The question naturally arises, why this unprecedented neglect? The answer is obvious: he had selected me for a *living spectacle* of Faxon's ignorance and quackery; his execrable design is executed, and I am no doubt, the living spectacle of the ignorance and quackery, corruption and fraud of Micajah Hawks and John Faxon. My charge against the Defendants were ignorance and negligence; either of which, proved, in any stage of the treatment would be sufficient to maintain the action. And I would now ask, are not the 4 weeks neglect without any other circumstance, abundantly sufficient for that purpose? Is there an intelligent, honest and unprejudiced person, in the nation? Is there one in the civilized world, that can read this testimony, and conscientiously say, that the De-

fendants are not guilty, and I ought not to have recovered heavy damages? I answer for myself, that there cannot be, and would add, that they unquestionably, ought to maintain me and my family for life. It is a well known principle of law, that a person, let his profession or calling be what it may, who undertakes any business for another, shall conduct in that business with ordinary skill, and use all due diligence to effect the object of his employer. Many decisions of recent date, might be cited to this effect, but I will only name the following which took place (I think) 1820, or 21. Mr. Wood, a respectable broker of Providence, took charge of a quantity of money in New-York, for the purpose of conveying to Providence or Boston; but by some imprudent conduct on his part, while on board the steam boat, the money was exposed and stolen. The owners brought a suit against him to recover the money, and although Mr. Wood was to receive no compensation for his service in the conveyance, and no one could entertain the least possible suspicion of his integrity; yet the Jury found a verdict for the Plaintiff, of 6 or 7000 dollars; and that too, only for the want of a little attention, where nothing but property was concerned. The celebrated Adam Smith, an eminent writer upon the Wealth of Nations, and the author of a most admired book, entitled Smith's Moral Sentiments, makes the following admirable observations, which are directly in point. "There is a degree of negligence, which would appear to deserve some chastisement, though, it should occasion no damage to any body. Thus if a person should throw a large stone over a wall into a public street, without giving warning to those who might be passing by, and without regarding where it was likely to fall, he would undoubtedly deserve some chastisement. A very accurate police, would punish so absurd an action even though it had done no danger. The person who has been guilty of it, shews an insolent contempt for the happiness and safety of others. There is real injustice in his conduct; he wantonly exposes his neighbour to what no man in his senses would choose to expose himself, and evidently wants that sense, of what is due to his fellow creatures, which is the basis of justice and of society. When any unlucky consequences happen from such conduct, the person, who has been guilty of it, is often punished as if he had really intended those consequences, and his conduct, which was only thoughtless, and insolent, and which deserved some chastisement, is considered as atrocious, and as deserving the severest punishment." Nothing we think, can be more just, than that one man should not suffer by the carelessness

of another ; and that the damage occasioned by blamable negligence, should be made up by the person who was guilty of it. It is almost impossible for the human mind to conceive of ideas and words better adapted to a cause, than the foregoing are to this. I shall now present Judge Weston's Charge.

CHARGE.

Gentlemen of the Jury,

In this case, the Plaintiff demands damages for the negligence and unskilfulness of the Defendants, in the management of his lameness. The Plaintiff has declared in various manners, but the amount of all the charge is, that they treated him unskilfully and negligently. Now, in making your verdict, you may find them both guilty, or both not guilty, or one guilty, and the other not guilty, according as you have found the evidence, which you have heard. For the Plaintiff to support his case on the charge of unskilfulness, it is necessary for him to make it appear, that the Defendants did not manage with competent skill. The skill required in this case is not the greatest possible skill, neither will the best possible skill be sufficient. You should compute the skill according to the state of practice, in the country where the Defendants live. It is not to be expected of a Surgeon or Physician in a country or obscure village, that he will possess the skill of a Surgeon in the city of London, or any other large city—this, it would be unreasonable to expect ; because in large cities, where there are a great many Surgeons and Physicians, a person may have his choice, there is always competition. The patronage of Surgeons in such places, is great ; in small villages, the patronage being small, we must not expect a very great degree of skill—No, gentlemen, all that is required in skill, is an ordinary degree of skill, compared with that of others in the

country where they reside. You will first enquire in what manner they did conduct, and then whether they did act according to ordinary skill. And 1st. as to Dr. Faxon, it appears in evidence to you, that Dr. Faxon had been Lowell's family Physician; that he had lived in the same village with him for several years, *that he did not make pretensions to Surgery, although he sometimes acted as a Surgeon; that, Dr. Faxon said, he could set it and for any thing that appears in evidence, did act skilfully; if he did not the Plaintiff should have shewn it.* He operated, said he thought it was set, he was not positive, because he said he *thought* it was set, and asked others who were standing by and assisting, if they did not think it was; and they also, thought it was set, with the exception of one man: he had seen a case of the kind before, and thought it was not set. Mr. Lowell and his friends consulted, and not relying very much upon Faxon, concluded to send for Dr. Hawks. Dr. Faxon had no objection: *then Gentlemen, it appears that Dr. Faxon had done all that was required of him, at that time, and if it had stopped there, unquestionably, there would have been no blame on Dr. Faxon, and you will judge, whether he did any thing afterwards, by which he became liable.* Dr. Hawks came in the course of two or three hours, he examined the case, and then proceeded to the operation, and out of compliment to Dr. Faxon, (he having been Mr. Lowell's Physician) gave him his choice, what part he would take, and he very modestly took a second hand birth. Then, Dr. Hawks proceeded, and after operating, said it was set. Dr. Faxon said it was set, also, and Mr. Lowell himself thought it set, and said it felt natural. Mr. Lowell never complained to any one, but that *Hawks acted skilfully at the operation. There was no difference perceived as to the length of the limb, until about the 23d of October: then Lowell shew it to Hawks.* Dr. Hawks appeared surprised, and no doubt was. He said it looked as though it was out. *Then he did nothing about it; and to ascertain whether he conducted skilfully, we will attend to the evidence of learned men,* produced on both sides. Dr. Warren and the other Boston Doctors attempted to reduce Mr. Lowell's injury at the Hospital; but did not succeed.

They say, it is a simple dislocation of the head of the thigh bone, *downward and backward* into the *ischiatric notch*; and that the head of the bone is lodged in the *ischiatric notch*. Dr. Brown and Dr. Eastabrook are of the same opinion. On the other hand, Dr. Nathan Smith, says it is now set, and that the lameness is owing to an affection of the muscles. Sir Ashley Cooper, the

greatest Surgeon in England, Surgeon to the King, Professor of Medicine and Surgery in St. Thomas and Guy's Hospitals, says that such a dislocation cannot happen, and that if there should be such an one, the limb would be from one half inch to an inch shorter than the other. Mr. Lowell's is three inches longer than the other. He says, the knee and toe would be turned in. Mr. Lowell's is not so. *So that they (the Boston Doctors,) must be in an error. Dr. Chandler and Dr. Frye are also opposed to the Boston Doctors, and notwithstanding they may be at the head of their profession in Boston, you must consider them wrong in this case.* Now then, although Drs. Mann, Warren, Spooner, and others say, that medical men of high standing could not differ in their opinion; you will see that they actually do differ. *And as to my own opinion, without pretending to any knowledge of surgery, I should say that the bone was lodged in the foramen ovale.*

Sir Ashley Cooper says, that in a dislocation of that kind, it would be 2 or 3 inches longer than the other—that is the case here. He says, the knee would project forward, and the knee and toe be about as usual—that is the case here. You will judge as to that. *Now if you believe, that they could not tell what the situation of the hip was, you will not think they acted unskilfully in that, because the most celebrated Surgeons, differ as to the real disease. And as to what was proper and necessary, if they could not help him any, you will judge, whether it was not best for them not to do any thing. It will no doubt be thought, that I have taken an unusual course in this cause; but I feel it incumbent on me so to do. If they could not help him, I ask you, if it would not be best not to do any thing?* The manner in which they operated is proved to you by Joshua A. Lowell, Mr. Sumner, and Mr. Stearns. If you believe them, and I know of no reason why you should not, and if they conducted the operation in the manner testified, *it does not appear but that they acted skilfully.* The Boston Doctors say there should be pullies used, and Dr. Brown and others say there should. On the other hand, Dr. Smith says there is no need of them; and if Doctors of the highest medical skill disagree as to the necessity of their use, *I do not see how you can condemn the Defendants for the part they took.* Sir Ashley Cooper says, it is necessary to have pullies, and it appears to be the latter and better opinion, that pullies should be used; but this is more established now, than formerly, *and it does not appear that any thing of that kind could be had in the place where they were; if they could have been had, it was incumbent on the Plaintiff to have shewn it; which he has not done.* It is not possible,

that the Defendants should have those conveniences for an operation in the town of Lubec, which might be had in the city of Boston; so that you will judge, whether they were liable on that consideration—*I must say, Gentlemen, I think they were not.—For any thing that appears the Defendants did the best they could; and if they did, and Mr. Lowell has sustained an injury, he is an unfortunate man; but Gentlemen, you will be very careful how you take money from the hands of one man, to put into the pockets of another. If you think the Defendants conducted skilfully as they could, at the operation; and it does not appear that Mr. Lowell ever complained of their conduct at the operation; you will not find them guilty for that.* Mr. Phelps tells you, that Mr. Lowell never complained of the conduct of either at the operation; he tells you, that Mr. Lowell told him he should sue them both jointly, because his Attorney advised him to sue both, to prevent Dr. Faxon from being a witness for Dr. Hawks. If he included Dr. Faxon in the suit, for that cause, it was a very unjustifiable thing, preventing Dr. Hawks of the benefit of Dr. Faxon's evidence. If he could have had that, he might have proved all their conversation, and every thing that happened. *If you find them guilty, their reputation is ruined, & they are greatly injured; but if you think them guilty of the offences charged against them, you are to remunerate Mr. Lowell in damages; you are to make him whole.* This case has had a very patient investigation, and been ably discussed by the counsel on both sides. The Deposition of Dr. Whipple although read in your hearing, cannot be considered evidence, not having been taken according to law. You will therefore, not give any weight to that, and will consider it as not having come before you. The Deposition of Dr. Sargent is before you and contains much the same as that. The testimony of Josiah Coffin, you have had in his Deposition. The Plaintiff has introduced a former deposition of his to invalidate his testimony. The two Depositions are said by the Counsel for the Plaintiff to be contradictory, and those parts which are inconsistent with each other, have been very ingeniously pointed out. Now, you will consider his two depositions, and if you think them so inconsistent that they cannot be true, you will weigh them accordingly. You will have them both before you, and will give them what weight you think they deserve. The testimony of Jacob Winslow, and Joshua A. Lowell as to Hawks' declarations concerning Faxon, shew, that he had *not a very great confidence in the skill of Dr. Faxon, if he had spoken it in a cool and deliberate manner; but they had probably had some little competition,*

and Hawks spoke it hastily and without regard to his real opinion of his skill. You have the testimony of Dr. Weatherbee and Dr. Chandler, who explained the bones of the pelvis, and the situation of the thigh bone in the different luxations; all going to establish that the Boston Doctors are wrong—and although they may be generally as correct as any in the profession, you must think that they have spoken with too much certainty, and that they put too much dependence on their own opinion. Si Ashley Cooper, who is probably the greatest surgeon in the world, says that such a dislocation cannot happen. In his first treatise, he says he thinks there cannot be any such; in his last, published in 1822, he says, “Be it remembered, that there cannot be a downward and backward luxation. Professor Smith, of New-Haven, Dr. Frye, Dr. Chandler, and Dr. Weatherbee are opposed to the opinion of the Boston Doctors, so that, as to the skill of the defendants, I think, Gentlemen, you cannot find them guilty of want of skill. And as to the negligence—if they conducted skilfully at the time, you will judge whether they could have done any thing more than they did. What else could be done, if they did all they knew? Upon the whole, the negligence will depend upon the unskilfulness, and you will judge of them both at the same time.

Counsel for the Plaintiff Messrs. Orr Wilson and Greenleaf—
For the Defendants Messrs. Crosby, McGaw, and Davids.

Of this charge, I scarcely know how to speak in terms sufficiently expressive of my sentiments, and at the same time dispassionate and decorous—it is in my opinion, replete with argument in favor of the Defendants, unfounded in facts, and forming a tissue of absurdities, which demand the interference, and serious consideration of the Legislature; and if my business were such as to admit of my personal attendance in Portland, I should certainly endeavour to obtain articles of impeachment against Judge Weston. Those parts of the charge, which are most palpably absurd, are printed in italics; to which, and the testimony of J. A. Lowell, the public attention is especially and respectfully invited: Is it not a little surprising, that Judge Weston should say in excuse for these men, that I without even an Academical education, and without ever seeing a dislocated limb in my life, before, did not complain of their unskilful management at the operation, until I declared it in my writ? It was sufficient for me to prove by respectable witnesses, the manner in which they did conduct; and afterwards, by professional men (the only proper persons to judge on this point) whether, that conduct were proper; and by what authority, he could say that Faxon did not pretend to Sur-

gery, I am at a loss to determine ; it certainly is not from the evidence, or any thing of public notoriety in this country. Why did he omit to name in his charge the testimony of Dr. Richardson, one of my witnesses ? Why did he not say to the Jury, that Dr. Smith of New-Haven, and the Doctors of Massachusetts and Maine, who had examined me, as well as all writers on Anatomy, were opposed to Cooper's position ? Why did he not tell the Jury, of the great balance of testimony in my favor ? Why did he say, it was incumbent on me to shew that *pullies* (a mere tackle and fall) might have been prepared in Lubec or Eastport ? Villages containing about 100 active and enterprising merchants, whose stores are filled with almost every article of merchandize, that can be found in Maine, and with harbours on whose waters are frequently seen to float, from 80 to 100 sail of vessels at a time. As I had shewn that *pullies* were necessary, and that they were not used, if the Defendants contended that they could not be obtained, in that section of the country, the burden of the proof was with them, and it was, therefore, illegal and absurd to require it of me. Why did he express so much sympathy for these men, who had treated me in such a barbarous manner, and tell the Jury how greatly they would be injured, if found guilty ; and never say one single word, as to my sufferings, or my incomparably greater injury than the loss of their reputation as Physicians ? How could he, when under the solemnity of an oath, and all the awful responsibility of his office, say that for any thing that appeared in all this evidence, the Defendants did act skilfully, that they did the best they could ? When the charges of ignorance and negligence are in their very natures distinct, and one may exist without the other ; and after having kept them separate through the whole of the investigation ; why did he confound them by instructing the Jury, that the charge of negligence would depend on the unskilfulness ? An idea more grossly absurd, I venture to say, was never uttered by a man who had any kind of pretensions to legal knowledge, much less by one on the bench of the Supreme Judicial court, when charging the Jury with one of the most important causes, that ever was tried in the State. Well might he say, " It will no doubt be thought, that I have taken an unusual course in this cause ;" but how could he add, " that he felt it incumbent on him so to do" ? Soon after the cause was given to the Jury, I fell in conversation with one of the most intelligent and respectable counsellors in this State ; to whom I observed, that I thought the charge would be reprobated by 49 in 50 of the legal characters in the country ; to which he replied, " I think so too," and added, " I cannot ae-

count for Weston's charge, I never knew him to put to sea without compass, rudder, or tiller to steer by, as he has in this case of yours"—and a respectable lawyer, from the county of Hancock, who was no way interested in the cause, was heard to say, "It is impossible to wink that negligence out of sight." I have also heard it said, that the argument of the Defendants' counsel would have been more correct as a charge, than the charge itself—and that "a Jury who could not convict men with such evidence before them, deserved to be convicted themselves." And I challenge Judge Weston to point out a single case of this nature in the whole history of Jurisprudence, which has been more clearly proved than this. And I do not believe it in the power of human testimony, to make a cause clearer than this as it respects Hawks; and though Faxon may not have been guilty of such aggravated neglect, yet as there was sufficient evidence of ignorance and stupidity, and of the joint undertaking, it would be contrary to legal principles, as well as justice, to sever them in a verdict. In the Judge's Eulogy on "Sir Ashley Cooper," and "Professor Smith," the flowery display of his own anatomical skill, fertile imagination, and undue attachment to the British, he seems to have forgotten the well known celebrity of the French Surgeons, and totally to disregard the positive testimony of all the Boston Surgeons; whose talents and learning would do honor to any age or nation of the world; and at the same time to give an undeserved importance to the testimony of two men of *Bowker and Tucker* memories; whose talents and learning, if they have any, are as much inferior to the Boston Doctors, as the bodily powers of a new born infant are inferior to those of the greatest giant of the age. Upon a deliberate and thorough review of this charge, and its absurdities; and a recurrence to the zealous and vehement manner in which it was delivered, I must say, I sincerely believe, a more extraordinary exhibition of violent prejudice and party zeal, or apparent violation of every principle of justice, mercy and humanity, can scarcely be found in the annals of the world.

Had Judge W. erred through excessive sympathy for the unfortunate and suffering party to the suit, his conduct would have admitted of some little palliation or excuse; but when it is recollected, that he sided with numbers, wealth, and power, against an obscure individual whose complicated misfortunes have rarely been combined in the fate of any man: yea, misfortunes, that have been sufficient to overwhelm the buoyant spirit of any man of common powers of mind, and such as ought to call forth the hearty commiseration of his fellow creatures; it is then, that, his

conduct appears in a doubly aggravated light. The manner in which the Judge has treated this evidence, and passed over the 4 weeks neglect ; and the doctrine which he has attempted to establish, all have a tendency to encourage falsehood, and a violation of the most sacred and interesting engagements. He may be able to reconcile his conduct to his own conscience ; but I think, he will be unable to do it to the satisfaction of the public, or the approbation of his God.

The amount of this interesting subject, appears to be this : viz. That I, in the prime of life with a simple dislocation of the hip, fell into the hands of Micajah Hawks and John Faxon, by whose ignorance and negligence, I have lost the use of my hip for life ; that after suffering 5 excruciating operations, and expending about 1000 dollars in Doctor's Bills, Nurses Bills, &c. and with a total loss of two years time and 1000 dollars more in an appeal to my Country for redress ; I have lost a just and plain cause, and that too, by the improper management of the Court, and the corrupt influence of a combination of unprincipled men, from various parts of the county of Washington.

I have now told my plain and unvarnished tale of woe, & when my readers arrive at this point, I trust they will be prepared to say, that I have unfolded to them a scene of injustice and oppression, which has few examples in the history of this Country, and such as ought not to be passed over in silence by the Government and People of this independant State. This cause is of no common interest to society, or the parties engaged ; for every good citizen must feel a deep interest in arresting the progress of imposture and quackery. It is one of peculiar bearing on the vital interests of many, for it strikes at the very root of *fraud and deception* in every profession ; and although I am a ruined man, and life has few charms remaining for me ; although I have been extremely unfortunate in the unexpected result of this suit ; there are no two acts of my life, on which I can reflect with more heart felt approbation, than the prosecution of Hawks and Faxon ; and the publication of this pamphlet ; and through subsequent life, I shall look back with the proud satisfaction, of having been a public benefactor, in exposing these Doctors and the Judge's charge, to the world.

Although I am satisfied, that this work is founded on the immutable basis of truth and justice ; and that it is couched in decorous and appropriate, though strong terms ; yet I have no doubt it will be assailed by some one of the numerous host of quacks, petty foggers, and gamblers, with whose base influence, I have had to contend during this protracted litigation ; but unless they do

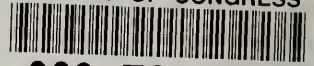
it in an ingenuous manner, and in their own proper names, I shall treat them with that silent contempt, which such communications deserve.

I cannot close these observations without remarking, that, unless Judge Weston's conscience (that monitor which the Great Disposer of events has given to every human being) has been entirely whipped to sleep, he must be a very unhappy man, when he reflects on the manner in which he has treated this cause ; and with all his literary acquirements, his health, wealth and honors, and all the disadvantages of my humble birth and education.— The poverty, pain, and afflictions which raise their hideous heads in all my paths, I would not exchange conditions with him, for the wealth of both the Indies ; for I have a “ conscience void of offence towards God and man.” And although the loss of my property, and the treatment I have received, the loss of the use of my hip, and the pains and sufferings which I am doomed to endure through the round of time ; the recollection of past enjoyments, together with other misfortunes (not interesting to the public) do at times all rush upon my mind with a weight and impetuosity beyond the power of human efforts alone, to sustain. Yet, amidst all these calamities—amidst the clouds of darkness and doubt, injustice and oppression, I can look forward and see the glimmerings of the sun, which seem to indicate the approach of better days.— There, I can behold the most profound and consummate wisdom, guiding the destinies of men ; and I feel a consciousness, that the Divine Blessing on the purity of intention, and the energy and perseverance which have characterized my hitherto rapid, but unsuccessful cause in life, will yet support, and conduct me through the labyrinth of life's thorny maze, to the peaceful shores of eternal blessedness, “ where the wicked cease from troubling and where the weary are forever at rest.”

CHARLES LOWELL.

Machias, January 1, 1825.

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